

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of:

Warren Tuckson
13101 Bradcliff Terrace, #912
Germantown, MD 20874

Complainant

Case No.: 522-0

vs.

Seneca Knolls Condominium
c/o Vanguard Management Association, Inc.
P.O. Box 39
Germantown, MD 20875-0039

Respondent.

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on April 24, 2002 pursuant to Section 10B-5, 10B-9(a), 10B-10, 10B-12, and 10B-13 of the Montgomery County Code, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

BACKGROUND

Warren Tuckson resides and owns the condominium unit at 13101 Briarcliff Terrace, Unit 912, which is a unit within the Seneca Knolls Condominium, and Mr. Tuckson is subject to the Association documents including the By-Laws.

On or about October 17, 2000, the water heater in his unit malfunctioned and significant damage was done to Mr. Tuckson's property, as well as adjacent property. Mr. Tuckson called a repair crew in to fix the problems and the evidence was clear that the total damage to his unit was in excess of the \$1,000 and the entire claim totaled approximately \$3,000. The initial expense incurred by Mr. Tuckson was for work done by Purofirst. The amount was \$1,370.90 and the evidence was clear that the bill was paid by Seneca Knolls Condominium (Ex. 1 – pg. 192-194). The Association's insurance carrier paid for all of the expenses, with the exception of the \$1,000 deductible, under the condominium's master policy. Since there was no dispute as to the material facts, the only question presented was who is responsible for the deductible.

A complaint was filed by complainant with the Common Ownership Communities ("CCOC"). Mediation was requested and held on November 14, 2001. In that the dispute was not resolved through this process, and all procedures and remedies provided in the Association's documents were exhausted, the matter was referred to the CCOC for action pursuant to Section 10B-11(f) of the Montgomery County Code. This matter was heard on April 24, 2002 in a hearing before a panel consisting of Commissioners Richard Skobel, Maggie Bruce and Panel Chair Jeffrey Van Grack.

FINDING OF FACT

1. Complainant is owner of a condominium unit within the Seneca Knolls Condominium located in Germantown, Maryland and created in 1992.
2. In October of 2000, Complainant's water heater broke¹ and caused damage to the Complainant's property as well as an adjacent property.
3. There was consistent testimony that all the restoration work had been done at the expense of the condominium's insurance company and the only issue was who was to pay the deductible.

APPLICABLE LAW –

a. Association Documents

The applicable Section of the Seneca Knolls By-Laws is Article X, Section 7, which is entitled *Insurance Deductible* and applies as follows:

Section 7. Insurance Deductible. In the event of an insured loss to a Unit, or Common Element, under the association's master casualty insurance policy, if the loss is caused by anything in a Unit or for which the Unit Owner has the maintenance, repair or replacement responsibility, then the deductible shall be paid by that Unit Owner without regard to the negligence of the Unit Owner.

In the event of an insured loss to a Unit, or Common Element, under the association's master casualty insurance policy, and the loss is not caused by anything in a Unit for which the Unit Owner has the maintenance, repair or replacement responsibility, then the deductible shall be paid by the Owner for the damage that is caused by the negligence or willful misconduct of the Owner, his or her tenant, guest, or invitee as determined by the Board in its sole discretion.

¹ The cause of the break was not an issue before the Commission and is irrelevant to the findings of fact and conclusion of law.

In the absence of negligence or a loss in which the Owner has the maintenance, repair or replacement responsibility and if the loss affects more than one Unit or a Unit and a Common Element, the cost of the deductible may be apportioned equitably by the Board among the parties suffering the loss in accordance with the total cost of repair. The cost of the deductible shall be paid by the Owner and shall constitute a lien upon the Unit and collected in the same manner as an assessment.

It is also necessary to review Article VI, Section 2 of the By-Laws, which when read together, places the maintenance responsibility of the water heater with the individual owner and provides as follows:

Section 2. By the Unit Owner. Each Unit Owner shall keep his or her unit and its equipment, appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all the redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of the Owner's Unit and such appurtenances....

These sections need to be read consistent with the Maryland Condominium Act, which specifically addresses insurance deductible at Section 11-114².

b. Applicable law – Maryland Condominium

11-142

- (a) Except as otherwise provided in this section, this Title is applicable to all condominiums. However, with respect to condominiums established before July 1, 1982, the declaration or master deed, by laws, or condominium plat need not be amended to comply with the requirements of this Title.
- (b) Except to the extent that the declaration or master deed, by-laws, or plat provide otherwise, §11-114 and §11-123 of this Title are applicable to all condominiums.

² The panel recognizes that the law was changed effective October 1, 2000 which is after the event, but in light of the language in Section 11-114(g), would not have changed its decision.

CONCLUSION OF LAW

The Seneca Knolls Condominium is governed by a Declaration of Covenants, Conditions and Documents and By-Laws duly filed and recorded in the land records of Montgomery County, Maryland on or before 1992. The language of Section 11-142 of the Maryland Condominium Act clearly allows the Association to rely on the By-Laws, if there is a specific provision to address some in the By-Laws. Clearly, Article X, Section 7 of the Seneca Knolls By-Laws addresses insurance deductibles and controls in this case.

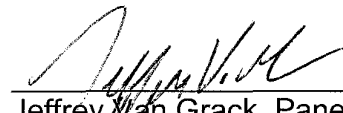
ORDER

In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is the 19th day of June, 2002 by the Commission on Common Ownership Communities,

ORDERED that the Complainant's request that the Seneca Knolls Condominium pay the deductible be, and the same hereby is, DENIED.

The foregoing was concurred in by panel members Richard Skobel and Maggie Bruce.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty days after date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.



Jeffrey Van Grack, Panel Chairman
Montgomery County Commission on
Common Ownership Communities

NOTE: Although the matter was not part of the merits in this case, and the events occurred before April 3, 2002, the Commissioners was concerned that the notices pursuant to Section 10B-9(d) of the Montgomery County Code may not have complied with the section. The facts in this case are unclear as to the need of the required notice in this case, but the panel wishes to reiterate that generally there is a need to provide the required notice.